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From: McLetchie, Sharon
Sent: April 15, 2010 05:03 PM
To: Herringer, Rick; Gauthier, Annette; Bedard, Raymond; Spicer, Sharon; Lawless, Lynn; Lawson, Lorne; Wiebe, Sara; Bissett, Jim; Leckey, Geoff
Cc: Laferriere, Dominic; Riedel, Sylvia; Aldaba, Jessica; Petrow, Sabrina; Millman, Janine; Joseph, Carole; Korso, Jana; Hobbs, Michèle; Hurley, Amanda; Kemper, Colleen; Barnabe, Madeleine; Askari, Saam
Subject: CIC Admissibility Review: Serious Crim and Appeal/H&C Rights Working Group Meeting - 15 Apr. 2010

As requested, please find below a brief summary of discussions held at this afternoon's Admissibility Review working group meeting at CIC.

This meeting was attended by representatives of CBSA, CIC, RCMP and CSIS.

Background:

Any immigration decision may be challenged by way of Judicial Review in the Federal Court of Canada and in some cases an appeal can be made to the Immigration Appeal Division (IAD) of the Immigration and Refugee Board (IRB).

Federal Court can review decisions such as whether the decision-maker acted within jurisdiction, whether the decision was fairly made, and whether the decision was reasonable in light of the evidence, to decide whether it was lawfully made. If the Court decides the decision was not properly made, the case will be sent back to the immigration and Refugee Board (IRB) to be re-decided by a different decision-maker. This type of appeal to the Court must be made within 15 days of a refusal made in Canada, or 60 days of a refusal made outside Canada. This process can delay removal by up to six years from the date of the initial decision as demonstrated by the widely publicized Jackie Tran case.

The IAD reviews new evidence and will consider whether a negative decision was legally made, and may also consider humanitarian and compassionate factors related to a case. If the IAD decides the decision was wrongly made, or there exist compelling Humanitarian and Compassionate factors, it will overturn the original decision and send the case back to the IRB to be re-decided in accordance with its findings. If the IAD dismisses the appeal, a further appeal of the IAD's decision may be made to the Federal Court.

Although CIC is required to consider all request for H&C consideration for individuals deemed to be inadmissible, no such exemptions have been granted for A34, 35, and A37 cases and PRs inadmissible for A36(1) who have received a sentence for imprisonment greater than 2 years have no appeal rights afforded to them.

Considerations:

- Limiting access to certain appeal rights to lead to expedited removals, while ensuring procedural safeguards are met
- Multiple appeal mechanisms lead to lengthy stays in Canada and may not be in Canada's best interest
- Ensuring that Canada is not considered a safe haven for persons falling under A34, A35, A37 and for persons with serious criminality
- Discussion on weight to be given to Federal Court decisions to circumvent the 2 years less a day provision for PRs and case exceptions like .
- Discussion on repealing s.64 (2) or removing the 2 years less a day threshold for A36(1) cases being appealed – charter cautions were noted as being minimal
- Should a separate case be made for "PRs" and "TRs" stream or by admissibility category to determine how to streamline the appeal mechanisms
- Discussion on backlogs for Ministerial Relief and IAD appeals and its contribution to delayed removals
- Discussion on what appeal mechanisms and what alternative mechanisms were available if appeals or H&C were denied to an inadmissible person. Rehab and TRPs were mentioned and PS mentioned an Alternatives to Removals initiative pending that may be of interest.

Decisions:

- Stats to be obtained from CBSA Hearings and the IAD at the IRB on the numbers of appeals for A34, A35, A36(1) and A37 cases
- Case Management to determine if a chronology of cases like the case could be packaged and shared
- Decided that there were no perceived overlap or contradictions with refugee reform
- PS to share the Alternatives to Removals initiative
- Ensure that any decisions include adequate procedural safeguards and that they meet the mandate of IRPA.

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Annex 10: Restrict Access to the IAD

Proposal :

Description

Modify the current bar to accessing the IAD contained in subsection 64(2) of IRPA for those with convictions punished in Canada by reducing the minimum sentence requirement from 2 years to 6 months and adding that all those with a foreign conviction, or who committed an act overseas, which if committed in Canada would carry a maximum sentence of at least 10 years, would also be barred.

Objective

The objective of this proposal is to expedite the removal of serious criminals from Canada and to deny serious criminals entry to Canada via a successful appeal to the IAD.



PROVISIONS RELATING TO FOREIGN CRIMINALS UNDER CITIZENSHIP, IMMIGRATION AND MULTICULTURALISM CANADA'S (CIC) PURVIEW

SYNOPSIS:

Permanent residents who are inadmissible for serious criminality and have been sentenced to less than 2 years may seek to appeal their removal orders to the Immigration Appeal Division (IAD). Citizenship, Immigration and Multiculturalism Canada (CIC) proposes to modify the current bar to accessing the IAD for the purpose of expediting the removal of certain serious criminals from Canada and to deny entry to Canada of others via a successful appeal to the IAD.

KEY INTERVENTIONS:

- The Canada Border Services Agency (CBSA) has collaborated with CIC in reviewing the *Immigration and Refugee Protection Act* (IRPA) in the context of the Admissibility Review
- One of the proposals developed in the context of the Admissibility Review would modify the current bar to accessing the IAD for those with convictions punishable in Canada by reducing the minimum sentence requirement from two years to six months. Persons with a foreign conviction, or who committed an act overseas, which if committed in Canada would carry a maximum sentence of at least 10 years, would also be barred from accessing the IAD.
- The CBSA is supportive of these proposed modifications to the IRPA as they will support the Government's commitment to limit access to the multiple levels of appeal available to allow for the faster removal of serious criminals, namely non-citizen offenders.

BACKGROUND:

- Currently, permanent residents who have received a sentence of less than two years of imprisonment for an offence committed in Canada have access to the IAD of the Immigration and Refugee Board. There are significant processing delays associated with this avenue of appeal. In addition, appeals to the IAD may result in further obstacles to removal as the IAD may order a stay of removal or may quash a removal order by allowing the appeal.